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Date of Decision: 24-1-96

Special Civil Application No.6873 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr. Y.S.Lakhani, learned counsel for the petitioner.
Mr. H.K.Rathod, learned counsel for the respondent.

Coram: (M.R. Calla, J.)

Dt: 24-1-96

ORAL JUDGMENT:

Rule.Mr.H.K.Rathod, learned counsel, waives service of rule on behalf of respondent.

On the request of the parties, the matter is taken up for hearing today.

This Special Civil Application is directed against the Award dated 24-8-93 passed by the Labour Court, Valsad in Reference (L.C.V.) No.2248 of 1990

whereby the relief of reinstatement with full backwages has been granted to the respondent-workman.

The respondent-workman was working as a driver in the Gujarat State Road Transport Corporation. He was posted at Mandvi Depot. On 26-12-85 while he was on duty enroute Jamnagar-Mandvi he handed over the bus for driving to one Harishsingh Jala of Anjar Depot and he himself occupied a seat behind a lady passenger. It is alleged that the respondent-workman behaved indecently with the said lady passenger and with regard to this incident, the petitioner was charge-sheeted. Inquiry was held. At the conclusion of the inquiry, on the basis of the findings in the said inquiry, which was recorded against the respondent, a show cause notice was given to him and he was dismissed from the service on 26-10-89. Against this order of dismissal, the respondent raised an industrial dispute. The reference was made to the Labour Court and the Labour Court, Valsad passed the Award on 24-8-93 directing the reinstatement of the respondent with full backwages. The petitioner-Corporation has come with a case that the entire relevant record in relation to the inquiry held against the respondent-workman had been given to the advocate, who had been engaged by the Corporation, who is a panel advocate at Labour Court, Valsad, but the advocate of the Corporation remained absent during the time of the hearing of the said case and did not produce the records before the Labour Court. It has also been submitted that the Corporation has already given a notice to the concerned advocate regarding his absence and the non production of the relevant records, which was in his custody on behalf of the Corporation and which was intended to be produced before the Labour Court. It is submitted that the Labour Court has held that the charges levelled against the petitioner were very serious, but in absence of the relevant records, the Labour Court has passed the Award in favour of the respondent-workman, although sufficient material was there to establish before the Labour Court that the findings had been correctly arrived at against the respondent and there was ample evidence to show that the respondent had committed serious misconduct during his duty hours and apart from handing over the bus to another person for driving, he had misbehaved with the lady passenger, about which the grievances were raised by Women Organisations also.

It is really unfortunate that against the Award, which was passed on 24-8-93, this Special Civil Application was preferred as late as on 7-8-95 by the Corporation and even in such a serious matter, the

Corporation has been absolutely indifferent and the filing of the petition in 1995 against the Award of 1993 only shows apathy of the Officers of the Corporation in such serious matters also. The result has been that the respondent was reinstated in service on the basis of the Award dated 24-8-93 on 1-10-93 and it is submitted that even at present, the respondent is in service and has been working as driver since 1-10-93.

Be that as it may, one thing is very clear that the advocate of the Corporation failed to produce the relevant records before the Labour Court and it can not be said as to what would have been the fate of the Reference had the entire material related to the inquiry including the inquiry report and the evidence, which was adduced during the inquiry, would have been produced before the Labour Court. Although the cause of the Corporation before the Labour Court has been defeated by its own lawyer, in my opinion, the cause of justice can not be defeated on account of such an inaction or otherwise conduct of the lawyer representing the Corporation. In order to see that the truth must prevail, let the entire matter be considered by the Labour Court on the basis of the entire record and, therefore, in the peculiar facts and circumstances of this case, and to advance the cause of justice, I consider it appropriate that the matter should be remanded to the Labour Court, Valsad so that the entire material relevant to the case is produced before the Labour Court and further the Labour Court may proceed to decide the matter afresh.

Accordingly this Special Civil Application is allowed. The Award dated 24-8-93 passed by the Labour Court is hereby quashed and set aside and the matter is remanded to the Labour Court with the direction that the Corporation may be given an opportunity to produce all the relevant documents before the Labour Court and to adduce the evidence and after giving proper opportunity to both the sides, including opportunity to produce any document or other evidence to the respondent, the Labour Court may decide the Reference de novo. In doing so, nothing said or observed herein this order shall affect the merits of the case of either of the parties before the Labour Court and the Labour Court shall pass the Award in accordance with law. The parties shall remain present before the Labour Court on 12-2-96 and the writ shall also be sent to the Labour Court, Valsad before 12-2-96. No further notice will be required to be given by the Labour Court to any of the parties and the Labour Court shall decide the Reference at the earliest possible

opportunity, but in no case later than a period of four months from the date the writ is served. It is further ordered that whereas the respondent is already working since 1-10-93, his present status shall be maintained for a period of four months from the date the writ is served on the Labour Court or till the Reference is decided by the concerned Labour Court, whichever is earlier. Rule is made absolute accordingly with no order as to costs.